

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REX – REAL ESTATE EXCHANGE, INC., a  
Delaware corporation,

Plaintiff,

v.

ZILLOW, INC., a Washington corporation;  
ZILLOW GROUP, INC., a Washington  
corporation; ZILLOW HOMES, INC., a  
Delaware corporation; ZILLOW LISTING  
SERVICES, INC., a Washington corporation;  
ZILLOW GROUP MARKETPLACE, INC., a  
Washington corporation; TRULIA, LLC, a  
Delaware limited liability company; and THE  
NATIONAL ASSOCIATION OF REALTORS,  
an Illinois trade association,

Defendants.

**No. 2:21-cv-00312**

**DECLARATION OF DARREN  
McCARTY IN SUPPORT OF MOTION  
TO SUPPLEMENT EVIDENTIARY  
RECORD IN SUPPORT  
OF PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

DECLARATION OF DARREN McCARTY IN SUPPORT OF  
MOTION TO SUPPLEMENT EVIDENTIARY RECORD  
Case No. 2:21-cv-00312

FOSTER GARVEY PC  
1111 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98101-3292  
PHONE (206) 447-4400

1 I, Darren McCarty, declare as follows:

2 1. I am an attorney licensed in the State of Texas and admitted pro hac vice in this  
3 matter as counsel to Plaintiff. I am over the age of 18 and have personal knowledge of all of the  
4 facts set forth herein.

5 2. At Defendants' request, on March 29, 2021, the parties submitted a joint  
6 stipulation requesting that the Court extend the deadlines related to REX's motion for  
7 preliminary injunction. Given the extended timeframe, I discussed with the parties REX's desire  
8 to supplement the record with any additional facts that arose after the motion was filed and  
9 agreed that REX would do so by April 15. The parties did not reach an agreement concerning  
10 REX's supplementation at that time, but the March 29 filing noted that REX would supplement  
11 the record by April 15, 2021.

12 3. On Tuesday, April 13, 2021, I emailed counsel for Defendants requesting a time  
13 to meet and confer concerning the proposed supplementation of the record. Counsel for Zillow  
14 Defendants provided his availability to confer, suggesting times on Wednesday, April 14, 2021.  
15 Counsel for the National Association of Realtors (NAR), however, stated that he would not  
16 confer before seeing the proposed motion and proposed exhibits. I offered to describe the  
17 contents of the proposed supplement during the conference given that I would not be able to  
18 circulate the documents until they were final. However, Counsel for NAR responded that he  
19 needed to see the proposed supplement before he could confer on the motion. Attached as  
20 **Exhibit A** is a true and correct copy of the above-described email correspondence.

21 4. The logistics of obtaining signatures from several different witnesses, all  
22 geographically diverse, who are dealing with the inconveniences of working in the COVID-19  
23

1 environment, did not allow for a final draft of the motion and exhibits to be distributed to  
2 Defendants' counsel until this afternoon, April 15, 2021.

3 5. Counsel for NAR ultimately responded that he would not be able to state his  
4 position concerning REX's motion to supplement the evidentiary record until Friday, April 16,  
5 2021. Attached as **Exhibit B** is a true and correct copy of email correspondence with counsel for  
6 NAR.  
7

8 6. Following distribution of the draft motion and exhibits, counsel for Zillow  
9 Defendants stated that they will not oppose the motion to supplement the evidentiary record.

10 7. Having not been able to obtain a position from NAR's counsel prior to filing on  
11 the date promised, REX submits the motion accordingly.  
12

13  
14 I declare under the penalty of perjury under the laws of the United States of America that  
15 the foregoing is true and correct.

16 EXECUTED this 15<sup>th</sup> day of April 2021, in Austin, Texas.  
17

18 *s/ Darren McCarty*

19 \_\_\_\_\_  
Darren McCarty  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I certify that on April 15, 2021, I electronically filed the foregoing document with the Clerk of the Court via CM/ECF which will notify all parties in this matter who are registered with the Court's CM/ECF filing system of such filing. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 15th day of April, 2021.

s/Shbien Cross  
Shbien Cross

DECLARATION OF DARREN McCARTY IN SUPPORT OF  
MOTION TO SUPPLEMENT EVIDENTIARY RECORD - 3  
Case No. 2:21-cv-00312

**FOSTER GARVEY PC**  
1111 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98101-3292  
PHONE (206) 447-4400

# **EXHIBIT A**

**From:** [Ethan Glass](#)  
**To:** [Darren McCarty](#); [Jurata, Jay](#)  
**Cc:** [Michael Vaska](#); [Rylan Weythman](#); [Cristina Moreno](#); [Mike Bonanno](#); [Swaminathan, Aravind](#); [Cohen, Russell P.](#); [Scotten, Naomi J.](#); [Tom Rubin](#); [Esparza, Denise](#)  
**Subject:** RE: REX v. Zillow: Conference Regarding Supplemental Filing  
**Date:** Wednesday, April 14, 2021 7:51:05 AM

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Again, I would like to see the proposed supplement, and have a chance to talk with my client, before we meet and confer. If you are still sending the proposed supplement today, tomorrow should be fine—so long as I get it early enough today to read it and talk to my client.

---

**From:** Darren McCarty [mailto:[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)]  
**Sent:** Wednesday, April 14, 2021 10:47 AM  
**To:** Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>; Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>  
**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>; Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>; Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>; Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>; Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>; Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>; Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>; Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>; Esparza, Denise <[desparza@orrick.com](mailto:desparza@orrick.com)>  
**Subject:** Re: REX v. Zillow: Conference Regarding Supplemental Filing

[EXTERNAL EMAIL]

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My offer remains to discuss today. I cannot guarantee when I will have a final for you. I assume you will make yourself available during the day tomorrow to confer given your position?

Darren

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**From:** Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>  
**Sent:** Tuesday, April 13, 2021 5:21:40 PM  
**To:** Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>; Darren McCarty <[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)>  
**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>; Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>; Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>; Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>; Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>; Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>; Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>; Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>; Esparza, Denise <[desparza@orrick.com](mailto:desparza@orrick.com)>  
**Subject:** Re: REX v. Zillow: Conference Regarding Supplemental Filing

I would like to see the proposed supplement and talk with my client before any meet and confer.

Ethan Glass  
Mobile: (202) 531-2396

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**From:** Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>

**Sent:** Tuesday, April 13, 2021 6:13:50 PM

**To:** Darren McCarty <[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)>; Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>

**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>; Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>; Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>; Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>; Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>; Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>; Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>; Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>; Esparza, Denise <[desparza@orrick.com](mailto:desparza@orrick.com)>

**Subject:** RE: REX v. Zillow: Conference Regarding Supplemental Filing

[EXTERNAL EMAIL]

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Darren and Ethan,

I am available between 1130-1 ET on Wednesday. Also agree with Ethan that it would be helpful to understand what the supplement will encompass in order to take a position on whether the Zillow Defendants will oppose it.

Best, Jay

---

**From:** Darren McCarty <[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)>

**Sent:** Tuesday, April 13, 2021 5:53 PM

**To:** Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>; Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>

**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>; Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>; Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>; Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>; Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>; Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>; Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>; Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>; Esparza, Denise <[desparza@orrick.com](mailto:desparza@orrick.com)>

**Subject:** Re: REX v. Zillow: Conference Regarding Supplemental Filing

Ethan,

I don't mind sharing it with you once final, but unfortunately that is unlikely to be until sometime late tomorrow.

Darren

---

**From:** Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>

**Date:** Tuesday, April 13, 2021 at 1:50 PM

**To:** Darren McCarty <[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)>, Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>

**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>, Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>, Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>, Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>, Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>, Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>, Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>, Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>, Esparza, Denise

<[desparza@orrick.com](mailto:desparza@orrick.com)>

**Subject:** RE: REX v. Zillow: Conference Regarding Supplemental Filing

Hi Darren, to be able to consider your request, please send us a copy of the supplement you propose to file. Best, eg

---

**From:** Darren McCarty [<mailto:darren@mccartylawpllc.com>]

**Sent:** Tuesday, April 13, 2021 2:46 PM

**To:** Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>; Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>

**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>; Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>; Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>; Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>; Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>; Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>; Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>; Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>; Esparza, Denise <[desparza@orrick.com](mailto:desparza@orrick.com)>

**Subject:** REX v. Zillow: Conference Regarding Supplemental Filing

[EXTERNAL EMAIL]

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Jay and Ethan,

As you know, we intend to file a motion to supplement the record on Thursday. Could we set a time tomorrow to confer to confirm whether you will oppose the motion to supplement? Between 10:30 am and 1 pm EDT is best for me. Thanks.

Darren

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# EXHIBIT B

**From:** [Darren McCarty](#)  
**To:** [Ethan Glass](#); [Jurata, Jay](#); [Mike Bonanno](#); [Swaminathan, Aravind](#); [Cohen, Russell P.](#); [Scotten, Naomi J.](#); [Tom Rubin](#); [Esparza, Denise](#)  
**Cc:** [Michael Vaska](#); [Rylan Weythman](#); [Cristina Moreno](#)  
**Subject:** Re: REX v. Zillow: DRAFT Supplemental Motion & Exhibits  
**Date:** Thursday, April 15, 2021 12:59:30 PM

---

I will file it as appropriate. Thanks Ethan.

Darren

---

**From:** Ethan Glass <ethanglass@quinnemanuel.com>  
**Date:** Thursday, April 15, 2021 at 2:56 PM  
**To:** Darren McCarty <darren@mccartylawpllc.com>, Jurata, Jay <jjurata@orrick.com>, Mike Bonanno <mikebonanno@quinnemanuel.com>, Swaminathan, Aravind <aswaminathan@orrick.com>, Cohen, Russell P. <rcohen@orrick.com>, Scotten, Naomi J. <nscotten@orrick.com>, Tom Rubin <tomrubin@quinnemanuel.com>, Esparza, Denise <desparza@orrick.com>  
**Cc:** Michael Vaska <mike.vaska@foster.com>, Rylan Weythman <rylan.veythman@foster.com>, Cristina Moreno <cristina@mccartylawpllc.com>  
**Subject:** RE: REX v. Zillow: DRAFT Supplemental Motion & Exhibits

You cannot say we oppose. You can say we asked for one day to review your proposed supplement, and you would not provide it.

---

**From:** Darren McCarty [mailto:darren@mccartylawpllc.com]  
**Sent:** Thursday, April 15, 2021 3:54 PM  
**To:** Ethan Glass <ethanglass@quinnemanuel.com>; Jurata, Jay <jjurata@orrick.com>; Mike Bonanno <mikebonanno@quinnemanuel.com>; Swaminathan, Aravind <aswaminathan@orrick.com>; Cohen, Russell P. <rcohen@orrick.com>; Scotten, Naomi J. <nscotten@orrick.com>; Tom Rubin <tomrubin@quinnemanuel.com>; Esparza, Denise <desparza@orrick.com>  
**Cc:** Michael Vaska <mike.vaska@foster.com>; Rylan Weythman <rylan.veythman@foster.com>; Cristina Moreno <cristina@mccartylawpllc.com>  
**Subject:** Re: REX v. Zillow: DRAFT Supplemental Motion & Exhibits

[EXTERNAL EMAIL]

---

Ethan, thanks for letting me know. I will note NAR's opposition to the filing. I, of course, tried to set a meet and confer on this matter two days ago. You refused and demanded a copy of the filing.

Jay, let me know if I should note Zillow as opposed. I remain available to discuss as needed.

Darren

---

**From:** Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>

**Date:** Thursday, April 15, 2021 at 2:47 PM

**To:** Darren McCarty <[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)>, Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>, Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>, Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>, Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>, Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>, Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>, Esparza, Denise <[desparza@orrick.com](mailto:desparza@orrick.com)>

**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>, Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>, Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>

**Subject:** Re: REX v. Zillow: DRAFT Supplemental Motion & Exhibits

We will not respond today. And I disagree with your apparent view that your meet and confer obligations are satisfied by sending 30 pages of documents and demanding a response in 90 minutes.

Ethan Glass  
Mobile: (202) 531-2396

---

**From:** Darren McCarty <[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)>

**Sent:** Thursday, April 15, 2021 3:34 PM

**To:** Ethan Glass; Jurata, Jay; Mike Bonanno; Swaminathan, Aravind; Cohen, Russell P.; Scotten, Naomi J.; Tom Rubin; Esparza, Denise

**Cc:** Michael Vaska; Rylan Weythman; Cristina Moreno

**Subject:** Re: REX v. Zillow: DRAFT Supplemental Motion & Exhibits

[EXTERNAL EMAIL]

---

Ethan,

As I said, it's quite brief and assume you do not need a detailed review simply to determine whether NAR opposes the motion to supplement. It does not, of course, impact NAR's right to contest the substance in NAR's reply. But if you believe your response will come well past 5, please let me know. Thanks.

Darren

---

**From:** Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>

**Date:** Thursday, April 15, 2021 at 2:25 PM

**To:** Darren McCarty <[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)>, Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>, Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>, Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>, Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>, Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>, Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>, Esparza, Denise <[desparza@orrick.com](mailto:desparza@orrick.com)>

**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>, Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>, Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>  
**Subject:** Re: REX v. Zillow: DRAFT Supplemental Motion & Exhibits

Thank you but I will not be able to review these materials and speak to my client all in 90 minutes. NAR will respond as promptly as it can.

Ethan Glass  
Mobile: (202) 531-2396

---

**From:** Darren McCarty <[darren@mccartylawpllc.com](mailto:darren@mccartylawpllc.com)>  
**Sent:** Thursday, April 15, 2021 3:20:27 PM  
**To:** Jurata, Jay <[jjurata@orrick.com](mailto:jjurata@orrick.com)>; Mike Bonanno <[mikebonanno@quinnemanuel.com](mailto:mikebonanno@quinnemanuel.com)>; Ethan Glass <[ethanglass@quinnemanuel.com](mailto:ethanglass@quinnemanuel.com)>; Swaminathan, Aravind <[aswaminathan@orrick.com](mailto:aswaminathan@orrick.com)>; Cohen, Russell P. <[rcohen@orrick.com](mailto:rcohen@orrick.com)>; Scotten, Naomi J. <[nscotten@orrick.com](mailto:nscotten@orrick.com)>; Tom Rubin <[tomrubin@quinnemanuel.com](mailto:tomrubin@quinnemanuel.com)>; Esparza, Denise <[desparza@orrick.com](mailto:desparza@orrick.com)>  
**Cc:** Michael Vaska <[mike.vaska@foster.com](mailto:mike.vaska@foster.com)>; Rylan Weythman <[rylan.veythman@foster.com](mailto:rylan.veythman@foster.com)>; Cristina Moreno <[cristina@mccartylawpllc.com](mailto:cristina@mccartylawpllc.com)>  
**Subject:** REX v. Zillow: DRAFT Supplemental Motion & Exhibits

[EXTERNAL EMAIL]

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All,

As you requested, attached is a draft motion and four related exhibits. All are brief. Please let me know by 5 pm EDT whether you will oppose/not oppose the supplemental filing. If you would like to speak, I am available at your convenience until then.

Darren